

REMARKS

As of the filing of the present reply, claims 1-10, 13, 14, 17-21, 28, and 30-33 were pending in the above-identified US Patent Application.

In the Office Action, product claims 1, 3, 6, 7, 9, 10, 14, 20, 21, 32 and 33 are rejected under 35 USC §103 based on U.S. Patent No. 7,147,604 to Allen et al. (Allen) in view of U.S. Published Patent Application No. 2003/0010808 to Uhland et al. (Uhland), method claims 2, 13, 17-19, and 30 are rejected under 35 USC §103 based on Allen and Uhland in view of U.S. Patent No. 4,869,263 to Segal et al. (Segal), and method claim 31 is rejected under 35 USC §103 based on Allen, Uhland and Segal in further view of U.S. Patent No. 5,662,712 to Pathak et al. (Pathak).¹

The Office Action does not acknowledge or rebut Applicants' arguments presented in their most recent reply filed January 25, 2008, concerning the differences between Allen and the invention recited in the claims as amended by their prior reply. Such an omission is contrary to MPEP

¹ Additional rejections were set forth in the Office Action, but are not at issue in the present "REQUEST FOR CLARIFICATION."

706.07² and 707.07(f)³. In particular, the section entitled “Response to Arguments” in the present Office Action merely states that Applicants’ arguments filed in their previous reply were “considered but moot in view of the new ground(s) of rejection.” However, the new rejections noted above assert that Allen’s sensor package is “configured to block a pulmonary artery” (citing column 3, lines 63-65, and column 7, lines 40-48), yet in their previous reply Applicants explained in detail why Allen’s sensor package is not. See Applicant’s reply of January 25, 2008, the paragraph bridging pages 25 and 26 through the paragraph bridging pages 26 and 27.

At particular issue is the rejection of method claims 2, 13, 17-19, 30 and 31, and Applicants’ prior remarks that Allen’s “flat thin sensor” is initially rolled when delivered and must be unrolled when implanted. Allen does not disclose or suggest how or why such a sensor would be delivered to block an artery, and Allen’s Figures 18-20 clearly show that such a sensor and delivery method do not result in the artery 268 being blocked.

² “[T]he final rejection . . . should include a rebuttal of any arguments raised in the applicant’s reply.”

³ “Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant’s argument and answer the substance of it.”

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Docket No. A4-1765
Reply dated May 5, 2008
In Response to Office Action dated April 17, 2008

Therefore, the Office Action fails to “answer the substance” of Applicants’ arguments presented in their prior reply, and instead summarily concludes that Allen’s sensor is indeed “configured to block a pulmonary artery” without any support or explanation that overcomes the technically well-reasoned explanation offered by Applicants.

In view of the above, Applicants respectfully assert that they are being unfairly denied an opportunity to fully prepare a complete reply to the rejections based on Allen because the Office Action fails to set forth any basis for maintaining the rejections in view of Applicants’ prior arguments concerning Allen. Applicants therefore respectfully request withdrawal of the present Office Action and restart of the period for reply under MPEP §710.06.

Respectfully submitted,



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